

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ALESSI & KOENIG, LLC,

Plaintiff(s),

v.

ALFRED T. DOLAN, JR., et al.,

Defendant(s).

Case No. 2:15-CV-805 JCM (CWH)

ORDER

Presently before the court is intervenor Federal Housing Finance Agency (“FHFA”) as conservator for counter defendant and defendant Federal National Mortgage Association’s (“FNMA”) motion to consolidate cases. (ECF No. 27). Counter defendant Saticoy Bay LLC Series 10250 Sun Dusk Ln. (“Saticoy”) filed a response. (ECF No. 28). FHFA and FNMA filed a reply. (ECF No. 33).

This is an HOA foreclosure sale lawsuit. FHFA intervened on behalf of FNMA to argue that FNMA’s property interest in the foreclosed real estate property was protected from foreclosure at the time of the sale by federal law. FHFA seeks to consolidate this case with a case involving similar claims that is before Judge Navarro: case no. 2:15-cv-01338-GMN-CWH.

At the time the motion was filed, a motion for class certification was pending in Judge Navarro’s case. FHFA argued that it was a member of the class and that the putative class action sought to resolve the same federal foreclosure bar argument that FHFA seeks to litigate here. It thus argued that consolidation was the most efficient way to resolve the federal bar question.

Since the motion was filed, however, Judge Navarro has denied the motion for class consolidation, entered judgment in favor of plaintiffs, and closed the case. (*See* ECF Nos. 104 and 105, case no. 2:15-cv-01338-GMN-CWH). The case is currently on appeal.

1 This court cannot consolidate a case before it with a closed case over which a different
 2 judge presides. This is particularly true when the primary basis for consolidation is the movant's
 3 membership in a putative class in the second case and the other judge's order denying class
 4 certification is currently on appeal. *See Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d
 5 1163, 1166 (9th Cir. 2001) ("Once a notice of appeal is filed, the district court is divested of
 6 jurisdiction over the matters being appealed."). Moreover, FHFA failed to file the motion to
 7 consolidate in both cases, which is required by Local Rule LR 1015(g)(1). *See D. Nev. R. LR*
 8 *1015(g)(1)*.¹ Judge Navarro was thus denied an opportunity to decide whether the cases should be
 9 administered jointly.

10 For the foregoing reasons, the motion to consolidate is denied without prejudice. If the case
 11 before Judge Navarro is reopened while this litigation remains unresolved, FHFA may renew its
 12 motion in accordance with the local rules.

13 Accordingly,

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that intervenor Federal
 15 Housing Finance Agency ("FHFA") as conservator for counter defendant and defendant Federal
 16 National Mortgage Association's ("FNMA") motion to consolidate cases (ECF No. 27) be, and
 17 the same hereby is, DENIED without prejudice.

18 IT IS FURTHER ORDERED that the parties to this matter shall submit a joint status report
 19 within five (5) days of entry of this order, consistent with Magistrate Judge Hoffman's January 7,
 20 2016, minute order. (ECF No. 34).

21 DATED July 25, 2016.

22 
 23 UNITED STATES DISTRICT JUDGE

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 28 ¹ The court cites to the local rule in effect at the time the motion was filed. The rules have
 since been amended, effective May 1, 2016. The court refers the parties to the new local rules,
 which shall govern all proceedings in this matter going forward.